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# Security Council

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**Security Council Committee established pursuant to resolution 1267 (1999)**

## Letter dated 16 April 2003 from the Permanent Representative of Guatemala to the United Nations addressed to the Chairman of the Committee

I have the honour to refer to the Secretariat's note verbale dated 4 March 2003, which requested us to submit to the Committee an updated report on all steps taken by the Guatemalan Government to implement the measures described in paragraph 4 (b) of resolution 1267 (1999), paragraph 8 (c) of resolution 1333 (2000) and paragraphs 1 and 2 of resolution 1390 (2002).

I attach herewith the report on the measures which the Guatemalan Government has taken in this regard (see annex).

(*Signed*) Gert **Rosenthal**
Ambassador
Permanent Representative

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**Annex to the letter dated 16 April 2003 from the Permanent Representative of Guatemala to the United Nations addressed to the Chairman of the Committee**

# Report on the steps taken by the Government of the Republic of Guatemala to implement Security Council resolution 1455 (2003)

## I. Introduction

**1. Please provide a description of activities, if any, by Usama bin Laden, Al-Qaida, the Taliban and their associates in your country, the threat they pose to the country and the region, as well as likely trends.**

We have no knowledge of any past or current activities of Usama bin Laden, Al-Qaida, the Taliban or their associates in Guatemala.

However, Guatemala's geographical location leads us to assume that the above-mentioned organizations might at some point commit terrorist acts within its borders; use it as a transit route, especially in sensitive or high-risk areas; or operate through related activities such as trafficking in drugs, weapons or explosives or money-laundering.

## II. Consolidated List

**2. How has the 1267 Committee's List been incorporated within your legal system and your administrative structure, including financial supervision, police, immigration control, customs and consular authorities?**

The Committee's list has been incorporated within Guatemala's administrative structure through the following:

(a) Under the mandate established in the Constitution of Guatemala and at the request of the Ministry of Foreign Affairs, the Superintendency of Banks, as the State financial supervisory body, has examined the regulated financial system to determine whether the listed individuals have conducted operations or held financial assets within that system. To date, no such assets have been found.

(b) The List has also been transmitted to the National Civil Police, the Department for Immigration, the consular services and the accredited consulates abroad.

**3. Have you encountered any problems with implementation with regard to the names and identifying information as currently included in the List? If so, please describe these problems.**

None.

**4. Have your authorities identified inside your territory any designated individuals or entities? If so, please outline the actions that have been taken.**

As stated above, to date, we have found no evidence that these individuals have conducted operations or held financial assets within Guatemala's financial system.

The competent Guatemalan authorities officially state that they have not found any of the listed individuals or entities to be present in the national territory.

**5. Please submit to the Committee, to the extent possible, the names of individuals or entities associated with Usama bin Laden or members of the Taliban or Al-Qaida that have not been included in the List, unless to do so would compromise investigations or enforcement actions.**

The competent Guatemalan authorities do not know of any individuals or entities associated with Usama bin Laden or members of the Taliban or Al-Qaida that have not been included in the List.

**6. Have any listed individuals or entities brought a lawsuit or engaged in legal proceedings against your authorities for inclusion in the List? Please specify and elaborate, as appropriate.**

An investigation carried out by the Guatemalan courts has determined that to date, no legal proceedings have been brought against the national authorities because no complaints against them have been received.

**7. . Have you identified any of the listed individuals as nationals or residents of your country? Do your authorities have any relevant information about them not already included in the List? If so, please provide this information to the Committee as well as similar information on listed entities, as available.**

Because Guatemala's archives are extensive and are stored physically rather than electronically, it has not been possible to determine whether any of the listed individuals is a national or a resident of the Republic of Guatemala. However, it has been determined that no application for Guatemalan citizenship has been made in the name of any of the listed individuals.

**8. According to your national legislation, if any, please describe the measures you have taken to prevent entities and individuals from recruiting or supporting Al-Qaida members in carrying out activities inside your country, and to prevent individuals from participating in Al-Qaida training camps established in your territory or in another country.**

As stated above, the competent Guatemalan authorities have not found any members of the Al-Qaida network or Al-Qaida training camps to be present in the national territory.

## III. Financial and economic assets freeze

**Under the sanctions regime (paragraph 4 (b) of resolution 1267 (1999) and paragraphs 1 and 2 (a) of resolution 1390 (2002)), States are to freeze without delay the funds and other financial assets or economic resources of the listed individuals and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, assets or resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory.**

**NOTE: For the purpose of implementation of the financial prohibitions in this sanctions regime, "economic resources" is defined to mean assets of every kind, whether tangible or intangible, movable or immovable.**

**9. Please describe briefly:**

**– The domestic legal basis to implement the asset freeze required by the resolutions above;**

As stated in Guatemala's previous report submitted under resolution 1390 (2002), pursuant to article 278 of the Code of Criminal Procedure and article 530 of the Code of Civil and Mercantile Procedure, a competent judge may order an urgent precautionary measure for the seizure of property and other resources, including funds deposited in bank accounts. Such measures may be applied if it is discovered that funds deposited in banks of the national system are associated with persons who collaborate with terrorism; the action produces the same result as freezing assets, because once it takes effect, the holder of the account cannot use the resources.

In the specific instance of cases related to the laundering of money or other assets, article 12 of the Act Against the Laundering of Money or Other Assets, Legislative Decree 67-2001, establishes that, in case of *periculum in mora*, the Office of the Public Prosecutor may order the confiscation, seizure or freezing of property, documents and bank accounts, which must be approved immediately by the competent judge or court.

In addition, article 13 of the Act establishes a system for the Office of the Public Prosecutor to have custody of the confiscated property.

**• any impediments under your domestic law in this context and steps taken to address them.**

There are no such impediments.

**10. Please describe any structures or mechanisms in place within your Government to identify and investigate Usama bin Laden, Al-Qaida or Taliban-related financial networks, or those who provide support to them or individuals, groups, undertakings and entities associated with them within your jurisdiction. Please indicate, as appropriate, how your efforts are coordinated nationally, regionally and/or internationally.**

Pursuant to article 133 of the Constitution, the Superintendency of Banks is responsible for supervising and inspecting banks, credit institutions, financial companies, surety entities and other bodies stipulated in the legislation.

By virtue of this mandate and on the basis of the lists issued by the Security Council, the Superintendency of Banks has conducted an investigation to establish whether the individuals or entities that appear on the lists have any relationship or business with the national financial system. As a result of these investigations, it has been determined that these individuals have not conducted operations or held financial assets within Guatemala's financial system.

If the existence of assets or resources of any individuals connected with the lists issued by the Security Council is detected in our financial system in the future, Guatemala has a legal framework that would allow it to freeze such funds.

**11. Please convey the steps banks and/or other financial institutions are required to take to locate and identify assets attributable to, or for the benefit of, Usama bin Laden or members of Al-Qaida or the Taliban, or associated entities or individuals. Please describe any "due diligence" or "know your customer" requirements. Please indicate how these requirements are enforced, including the names and activities of agencies responsible for oversight.**

With respect to the requirements of due diligence and "know your customer", the Act on Banks and Financial Groups, Decree No. 19-2002 of the Congress of the Republic, stipulates that entities within the formal financial system shall implement and apply administrative policies aimed at knowing and identifying the legal and natural persons with whom they establish commercial relations. Similarly, article 20 of the Act Against the Laundering of Money or Other Assets, Decree No. 67-2001 of the Congress of the Republic, bans all obligated persons mentioned in article 18 of the Act from holding anonymous accounts and accounts under false or inaccurate names. Such precautions enable the financial institution and the competent authorities fully to identify account holders. Article 21 of the Act establishes the duty of obligated persons to keep a detailed record of the legal and natural persons with whom they establish commercial relations or relations in the normal or apparently normal course of business:

Article 21 — Records. Obligated persons shall keep a record (i.e. forms) to keep the Special Audit Office informed of the legal and natural persons with whom they establish commercial relations in the normal or apparently normal course of business (occasional or regular customers) and operations carried out (especially when new accounts are opened, trust fund transactions are carried out, safe deposit boxes are rented or cash transactions take place involving more than the amount stipulated in article 24).

The identity, registered name or designation, age, occupation or company aim, marital status, domicile, nationality, legal status, legal capacity and personality of those referred to in the previous paragraph shall also be verified by reliable means. In the case of foreign nationals, the obligated persons shall demand reliable proof of their entry and legal residence and the identity of their legal representative.

For the purposes of applying the "know your customer" policy, the financial intelligence unit known as the Special Audit Office has issued legally binding forms for compulsory, general use throughout the financial system. These forms enable the above-mentioned provisions to take effect.

As far as the names and activities of agencies responsible for oversight are concerned, pursuant to article 133 of the Constitution, the Superintendency of Banks is responsible for supervising and inspecting banks, credit institutions, financial companies, surety entities and other bodies stipulated in the legislation.

The body responsible for preventing the laundering of money and other assets is the Special Audit Office set up by article 32 of the Act Against the Laundering of Money or Other Assets. The Special Audit Office is part of the Superintendency of Banks and is the centralized body responsible for receiving and processing information from obligated persons.

**12. Resolution 1455 (2003) calls on Member States to provide "a comprehensive summary of frozen assets of listed individuals and entities". Please provide a list of the assets that have been frozen in accordance with this**

**resolution. This list should also include assets frozen pursuant to resolutions 1267 (1999), 1333 (2001) and 1390 (2002).**

As previously stated, investigations carried out on the basis of the Security Council list have shown that none of the listed individuals have conducted operations or held financial assets within Guatemala's financial system.

The competent authorities have not therefore frozen any assets of individuals or entities that appear on the list.

**13. Please indicate whether you have released pursuant to resolution 1452 (2002) any funds, financial assets or economic assets that had previously been frozen as being related to Usama bin Laden or members of the Al-Qaida or the Taliban or associated individuals or entities. If so, please provide reasons, amounts unfrozen or released and dates.**

As previously stated, the competent authorities have not frozen any assets of individuals or entities that appear on the list.

**14. Pursuant to resolutions 1455 (2003), 1390 (2001), 1333 (2000) and 1267 (1999), States are to ensure that no funds, financial assets or economic resources are made available, directly or indirectly, to listed individuals or entities or for their benefit, by nationals or by any persons within their territory. Please indicate the domestic legal basis, including a brief description of laws, regulations and/or procedures in place in your country to control the movements of such funds or assets to designated individuals and entities.**

Guatemala has no legislation to apply the provisions of resolutions 1455 (2003), 1390 (2001), 1333 (2000) and 1267 (1999).

However, two bills are currently being prepared to prevent and suppress terrorism and the financing of terrorism in particular. Those bills, which will include relevant international standards, will also establish the appropriate mechanisms for investigation and financial analysis and confer concrete powers on the country's competent authorities.

It should also be pointed out that Guatemala is a party to the United Nations International Convention for the Suppression of the Financing of Terrorism.

## IV. Travel ban

**Under the sanctions regime, all States shall take measures to prevent the entry into or transit through their territories of listed individuals (paragraph 1 of resolution 1455 (2003), paragraph 2 (b) of resolution 1390 (2002)).**

**15. Please provide an outline of the legislative and/or administrative measures, if any, taken to implement the travel ban.**

In accordance with United Nations Security Council resolutions, Guatemala would prevent any person appearing on the List from entering the country. The List is in the information system of the Department of Immigration which monitors entry into and exit from Guatemalan territory.

**16. Have you included the names of the listed individuals in your national "stop list" or border checkpoint list? Please briefly outline steps taken and any problems encountered.**

As stated in the previous response, the List is included in the information system of the Department of Immigration. Most border checkpoints have access to this information through satellite links.

No problems have been encountered to date.

**17. How often do you transmit the updated List to your border control authorities? Do you possess the capability of searching List data using electronic means at all your entry points?**

Whenever a name is added by the Security Council, the updated list is sent to the Department of Immigration. In response to the second half of the question, most border points have computer systems.

**18. Have you stopped any of the listed individuals at any of your border points or while transiting your territory? If so, please provide additional information, as appropriate.**

No one has been stopped.

**19. Please provide an outline of the measures, if any, taken to incorporate the List in the reference database of your Consular offices. Have your visa-issuing authorities identified any visa applicant whose name appears on the List?**

There are no databases in the Consular offices. However, the Department of Consular Affairs within the Ministry of Foreign Affairs is responsible for the List and has faxed it to the consular sections of embassies in Guatemala, professional consuls and commercial consuls abroad.

To date, no one requesting a visa has been identified as appearing on the List.

## V. Arms embargo

**Under the sanctions regime, all States are requested to prevent the direct or indirect supply, sale and transfer, to Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals and entities associated with them, from their territories or by their nationals outside their territories of arms and related materiel of all types, including the provision of spare parts and technical advice, assistance, or training related to military activities (paragraph 2 (c) of resolution 1390 (2002) and paragraph 1 of resolution 1455 (2003)).**

As we noted in our report in response to resolution 1390 (2002), the steps taken to comply with resolution 1390 (2002) include the transmittal of the Security Council lists related to international terrorism to the Ministry of Defence and the Ministry of the Interior. The Department of Arms and Munitions Control (DECAM) has verified that to date no weapons or ammunition have been supplied, sold or transferred to any listed individual. Each application for a licence to import weapons and ammunition is checked against the list issued by the Security Council.

**20. What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction (WMD) by Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?**

The Government has continued to transmit the Security Council list related to international terrorism to the Ministry of Defence and the Ministry of the Interior. The Department of Arms and Munitions Control (DECAM) has verified that to date no weapons or ammunition have been supplied, sold or transferred to any listed individual. Each application for a licence to import weapons and ammunition is checked against the list issued by the Security Council.

In Guatemala, defensive weapons and ammunition are sold by the various private companies that deal in weapons, and these companies are licensed, controlled and monitored by the Department of Arms and Munitions Control (DECAM) of the Ministry of Defence.

Guatemala does not have the technology to produce weapons and therefore does not export them.

Movement and transport of weapons are covered by articles 67, 70 and 71 of the regulations implementing the Weapons and Ammunition Act.

"Article 67 — Application for transport of ammunition and/or propellants. The application shall be submitted to DECAM and must indicate the applicant's given and family names and resident card number, the origin of the weapons and ammunition, destination, route to be taken, security precautions, guard arrangements, amount of covered ammunition and/or propellants and means of transport."

"Article 70 — Authorization to transport firearms and/or ammunition abroad. Individuals and/or juridical persons wishing to transport defensive and/or sport firearms and/or ammunition abroad must submit an application to DECAM.

"The application must be submitted on lesser-value stamped paper and contain the applicant's complete given and family names, age, marital status, profession or trade, address, nationality, country of residence, place for receiving official notices and serial and registration numbers of the resident card; in the case of a juridical person, the personal data required will be those of the legal representative. The application shall also indicate the type of weapon, make, model, calibre, registration number, type of barrel, calibre or barrel adaptations, destination and reason for the transport, place, date and signature, and it shall be accompanied by a photocopy of the certificate of possession and, in the case of a juridical person, a photocopy of the appointment of the legal representative.

"The application shall be processed within 72 hours."

"Article 71 — Transport of sport firearms and ammunition abroad for competitions. In order to transport sport firearms and related ammunition abroad for purposes of international competitions, it shall be sufficient for the Sport Shooting Federation, with authorization from the Autonomous Sports

Confederation of Guatemala, to request authorization from DECAM by submitting a list of the firearms together with the names and the serial and registration numbers of the resident cards of the competitors who will be using them, also indicating the types, makes, models, calibres, registration numbers and barrel lengths of the firearms to be used, and the place, date and signature.

"The application shall be processed within 72 hours."

**21. What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them?**

Guatemalan law is general in nature, that is, it does not specifically criminalize the violation of the embargo. The proposed terrorism bill provides that any person who is associated with a terrorist act shall be considered a principal; in consequence, a violation of the embargo would be considered a terrorist act and would be punishable as such.

**22. Please describe how your arms/arms broker licensing system, if any, can prevent Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.**

The list issued by the Security Council has been entered into the DECAM database, which is consulted before a licence to import weapons and ammunition is issued.

The conditions for granting a licence are the following:

(a) "Individuals, firms. Article 48 of the Weapons and Ammunition Act, Decree 39-89. Conditions the buyer must fulfil. In order to purchase a defensive or sport firearm, the interested party must submit to a person or entity authorized to sell it a legalized photocopy of his/her resident card, certifications that he/she has no criminal or police record and an attestation of employment or income. If, because of his/her occupation the interested party cannot present the latter documents, he/she must submit an affidavit declaring his/her income and the occupation by which it is earned.

"The seller shall send the documentation to DECAM within 24 hours of the sale.

"The buyer is authorized to take the firearm, within three days of the sale, from the commercial establishment where it was sold to the offices of DECAM to register the firearm and then to take it from DECAM to the buyer's place of habitual residence. For that purpose, the invoice is sufficient proof of the sale.

(b) Article 125 of the Regulations to the Weapons and Ammunition Act, Government Order No. 429-91. Temporary export and import. Individuals may export and import firearms temporarily for repair or use in sporting events, the only requirement being that they must notify DECAM, giving identification data on the firearms and indicating the time of return.

**23. Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated?**

The State of Guatemala does not manufacture weapons, and the ammunition produced by the ammunition factory belonging to the Ministry of Defence is for the sole use of the Guatemalan army.

## VI. Assistance and conclusion

**24. Would your State be willing or able to provide assistance to other States to help them implement the measures contained in the above-mentioned resolutions? If so, please provide additional details or proposals.**

Unfortunately, Guatemala is not in a position at present to provide assistance to other States.

**25. Please identify areas, if any, of any incomplete implementation of the Taliban/Al-Qaida sanctions regime, and where you believe specific assistance or capacity-building would improve your ability to implement the above sanctions regime.**

The areas where technical cooperation would be useful are the following:

- Immigration services and travel documents;
- Airport security;
- Link between drug-trafficking and terrorism;
- Arms-trafficking;
- Money-laundering.